GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Tribal Welfare Department – Appeal Petition filed by Smt. Pynuru Sobha, D/o Ganesh, Occ: Govt. Teacher, R/o SPSR Nellore District, against the proceedings No. Rc.C5 (M)/1576/2013, dated 29.12.2013 of the District Collector, SPSR Nellore, under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) - Regulation of Issue of Community Certificates Act, 1993 (AP Act No.16/1993) – Appeal Petition dismissed – Orders - Issued.

SOCIAL WELFARE (TW.CV.2) DEPARTMENT

G.O.MS.No. 17 Dated: 08-02-2019

Read the following:

1. Proceedings of the District Collector, SPSR Nellore District Rc.No.C5(M)/1576/2013, dated 29.12.2013.
2. Appeal Petition filed by Smt. Pynuru Sobha D/o Ganesh, Occ: SGT, R/o Rapur (V)& (M), SPSR Nellore District, dated:24.02.2014.
3. Govt. Memo no.2638/CV.2/2014, dt:07.04.2014.
4. From the District Collector, SPSR Nellore, Lr.No. Rc.C5(M) 1576/2013, dated 26.10.2014 & 25.03.2015.
5. Govt. Memo No.2638/CV.2/2014, dated: 01.06.2017.
6. Documents filed by the appellant, before the Appellate Authority on 15.07.2017.
7. Govt. Memo No.2638/CV.2/2014, dated: 18.08.2017, 26.09.2017, 08.11.2017, 28.11.2017, 10.01.2018, 06.02.2018, 20.03.2018, 30.04.2018, 05.06.2018, 07.08.2018, 17.09.2018 & 22.10.2018.

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ORDER:

In the reference 1st read above, the District Collector, SPSR Nellore has issued orders cancelling S.T.-Yanadi caste certificate obtained from the then Mandal Revenue Officer, Nellore & Tahsildar, Rapur, in the year 1989 & 2009 by Smt. Pynuru Sobha, D/o Ganesh.

2. In the reference 2nd read above, Smt. Pynuru Sobha, D/o Ganesh , has filed an Appeal Petition before the Government, against the Proceedings of the District Collector, SPSR Nellore. After examining the said Appeal Petition, Government have admitted the Appeal Petition and called for the parawise remarks and connected records from the District Collector, SPSR Nellore in the reference 3rd read above.

3. In the reference 4th read above, the District Collector, SPSR Nellore has furnished the Parawise remarks and the connected records on the Appeal Petition filed by Smt. Pynuru Sobha, D/o Ganesh.

4. The said Appeal Petition has been posted for hearing on 24.06.2017, 15.07.2017, 16.09.2017, 21.10.2017, 18.11.2017, 16.12.2017, 27.01.2018, 17.02.2018, 07.04.2018, 19.05.2018, 23.06.2018, 18.08.2018, 06.10.2018 & finally on 03.11.2018 and the same has been informed to the Appellant and the Counsel for the Appellant in the references 5th & 7th read above, and they were requested to attend for the hearing along with all Documentary Evidences/ Certificates in support of the community claim, failing which, it will be construed that there is no explanation what-so-ever to furnish in the matter and that the case will be decided based on the material available with the Government. Further, the appellant has filed documents in support of her ST-Yanadi community claim, before the Appellate Authority on 15.07.2017 and the Appellate Authority has conducted the final hearing in the said appeal petition on 03.11.2018 & the appellant/ the Counsel for the appellant were attended for the said hearing schedule and argued the case.

5. After hearing both the sides and on perusal of the records/ the copies of evidences/academic record/ grounds filed by the Appellant / the parawise remarks submitted by the District Collector, SPSR Nellore and proceedings of the District Collector, SPSR Nellore, dated 29.12.2013, the Appellate Authority is observed that :

I. The appellant in her grounds has stated that the order of the District Collector, is contrary to law, weight of evidence and probabilities of the case and he has failed to follow the procedure laid down under the act and the rules made there under and also failed to appreciate the documentary Evidence i.e. the date of birth certificate and transfer certificate of the school of the appellant in proper perspective and pass the impugned order by cancelling the caste certificate, which is contrary to law and against the principles of natural justice.

[Contd..on P.2]

II. Further she has stated that the District Collector, passed an impinged order only basing on the alleged enquiry report of the Commissioner of Tribal Welfare and no enquiry independent of the report of the Commissioner was conducted in accordance with the rules and the authorities failed to appreciate the evidence produced by the appellant by claiming that her father belongs to Yanadi Caste and even her mother belongs to OC, the caste of the father prevails to their children.

III. The District Level Scrutiny Committee has observed that before the DLSC, the appellant has stated that her father belongs to Yanadi (ST) and her mother belongs to Modaliar (OC) community. It is submitted that after the marriage between a tribal with a non-tribal, the main factor for consideration is whether the couple is accepted by the tribal society to which the tribal spouse belongs. If she is accepted by the Society, then their children shall be deemed to be Scheduled Tribe. But this situation can normally happen when the husband is a member of the Scheduled Tribe. However, circumstances may be there when a Scheduled Tribe woman may have children from marriage with a non-Scheduled Tribe man. In that event, the children may be treated as Scheduled Tribes only if the members of the Scheduled Tribe community accept them and treat them as members of their own community. The recognition and acceptance by the society of the children born out of a marriage between a member of Scheduled Tribe with an outsider, which is the main determining factor irrespective of whether the tribe is matriarchal or patriarchal. The final result will always depend on whether the child was accepted as a member of the Scheduled Tribe or not. In this case, the appellant herself married to a person, who belonging to forward caste, i.e, Modaliar (OC) which is her mother's community. She has not produced any evidence in support of the ST status of her father. Beyond that, she replied to the Committee that she does not know the details of her father and his relatives. Hence, it is construed that she is not in the fold of Yanadi-ST community and she was not accepted by the tribal society. In view of the above, she cannot be considered as a member of Yanadi-ST community. With a malafide intention, her family members have obtained certificates fraudulently that she belongs to Yanadi-ST caste. Based on the DLSC findings, the District Collector, SPSR Nellore has cancelled the appellant's ST-Yanadi caste certificate.

IV. Under section 6 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (AP Act No.16/1993) the burden of proof lies on the Appellant only.

V. The Appellate Authority is observed that during the course of hearing of the advocate of the appellant submitted arguments as per grounds in appeal petition and stated that the lower authority failed to observe that the appellate belongs to ST community and her birth certificate and transfer certificate of school indicates that she belongs to ST community and her father brought her who belongs to ST community and her mother belongs to OC community and she was recognized ST community and prays to consider that the appellant belongs ST community. On verification of the documents and the grounds of appeal and Para wise remarks as well as the other documents and material available on the record it is noticed that except the above contention nothing was placed for appreciation of the case of the appellant and she failed to produce any evidence that she was accepted by the tribal community and also filed to any evidence that her father belongs to ST community. It is further brought to the notice that the certificate earlier issued to the individual in a routine manner and the same was cancelled after conducting detailed and thorough enquiry into the caste status of the individual. That as per the Act 16/1993, the burden of proof lies on the appellant and it is the responsibility of the appellant to produce necessary evidence and documents to claim the same. The appellant, could not place any additional material despite having been given several opportunities by the Appellate Authority and the Government in principle is very liberal in receiving the documents in any stage of the appeal in order to ensure that the principles of natural justice are strictly followed and the party having Genuine claim should never be deprived of the same under the guise of technicalities or some procedures. In the instant case that the appellant except relaying the evidence filed before the lower authority failed to produce any additional material for re-appreciation of the case on hand. As seen from the record the lower authority passed the order after reasonable appreciating the evidence available on record as per law which deserves no interference. Hence it is apparent that the appeal is devoid of any merits and there is no infirmity either in the findings of the DLSC or the learned District Collector, SPSR Nellore District.

[Contd..on P.3]

VI. Further, it is observed that in Circular Memo No.10956/CV1/97-2, dt.16.2.1998 instructions were issued by the Government for issuance of Caste Certificates. As per the said instructions general instructions for claiming Community Certificates are as follows:

General Instructions :- (Applicable in all cases)
Where a person claims to belong to Scheduled Caste or Scheduled Tribe by birth it should be verified:-

i. that the person and the parents actually belong to the community claimed;
ii. that this community is included in the Constitution (Scheduled Castes and Scheduled Tribes) Order, 1950 as amended in 1976, which specified the Scheduled Castes or Scheduled Tribes in relation to the State of Andhra Pradesh;
iii. that the person belongs to the State of Andhra Pradesh and the area within the State in respect of which the community has been Scheduled;

V. Status of the Off-spring of a couple where one of the spouses is a member of Scheduled Caste and the other that of a Scheduled Tribe.

As regards the status of the off-spring whose father is a member of Scheduled Caste and mother of a Schedule Tribe, the prima-facie presumption is in favour of the child possessing the caste of the father, in the large majority of cases, having regard to the concept of domicile explained in para IV above. Apart from this, it may also be a relevant criterion to see whether the child has been accepted and assimilated in the Scheduled Caste community to which the father belongs. The same principal will also apply to the case of an off-spring whose mother is a member of a Scheduled Caste and father of a Scheduled Tribe. However, each case has to be examined in the light of the attendant facts and circumstances. As per the said instructions stated supra, in the instant case, the appellant has failed to produce the any evidence that she was accepted by the tribal community and also failed to her father belongs to ST community. That taking consideration of the above and material on the record that it can be concluded that the lower authority passed the orders as per law which does not deserve any interference.

6. In view of the several reasons recorded in the paras supra, the Government, in exercise of the powers conferred under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (Act No.16 of 1993), decide that the appeal petition filed by, Smt. Pynuru Sobha, D/o Ganesh, does not deserve any interference. Hence, Proceedings of the District Collector, SPSR Nellore issued vide Rc.No.C5(M)/1576/2013, dated 29.12.2013, is hereby upheld and the appeal petition filed by , Smt. Pynuru Sobha, D/o Ganesh, is hereby dismissed and the caste certificates issued by the then Mandal Revenue Officer, Nellore & Tahsildar, Rapur, is deemed to be cancelled.

7. The District Collector, SPSR Nellore is directed to take necessary consequential action in the matter.

8. The records (containing Rc.No.C5(M)/1576/2013, dated 29.12.2013, pages CF; 1-30) received from the District Collector, SPSR Nellore through in the reference 4th read above, are returned herewith in original to the District Collector, SPSR Nellore and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

R. P. SISODIA
PRINCIPAL SECRETARY TO GOVERNMENT

To
The District Collector, SPSR Nellore.
(with original records) (BY RPAD)

Smt. P.Sobha, P.S.H.M.,
M.P.P. School, Bhagath Singh Colony, Nellore District.

Sri V.Roopesh Kumar Reddy, Advocate,
H.No.8-3-231/B/71, Sri Krishna Nagar,
Yusufguda, Hyderabad.

Copy to :
The Director, TCR& TI, AP, Amaravati.
(with a request to attend the said hearing along with relevant material)
The PS to M(HF&TW).
The PS to Principal Secretary(TW).

// FORWARDED:: BY ORDER //

SECTION OFFICER